

The **NORTH CAROLINA REGISTER**

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NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter sized single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. One year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1988 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1988.

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NORTH CAROLINA REGISTER

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(April 1991 - December 1992)

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*****	*****	*****	*****	*****
04/01/91	03/11/91	03/18/91	05/01/91	08/01/91
04/15/91	03/22/91	04/01/91	05/15/91	08/01/91
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11/16/92	10/23/92	10/30/92	12/16/92	03/01/93
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12/15/92	11/24/92	12/01/92	01/14/93	04/01/93

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

EXECUTIVE ORDERS

EXECUTIVE ORDER NUMBER 140 APPOINTING SPECIAL COMMISSION TO INVESTIGATE SHORTAGES IN THE NORTHAMPTON COUNTY SCHOOLS' FINANCES

The Northampton County Board of Commissioners has asked that I appoint a special commission to investigate shortages and the causes for the shortages in the Northampton County Schools' finances. Documents were submitted in support of the request which evidence that shortages totaling \$484,185 were suffered during the 1988-89 and 1989-90 school years and that there have been various violations of the North Carolina School Finance Act. The request was made by the Northampton County Board because it felt that the financial condition of the schools had deteriorated to the point that neither the Northampton Board of Education nor the Northampton County Board could cope with it.

North Carolina General Statute §143-158 authorizes the Governor to appoint special commissions to investigate State departments or institutions and submit their findings to him.

Article IX, Sec. 5 of the Constitution vests the State Board of Education with the authority and responsibility for supervising and administering the State's free public school system and the educational funds provided by the State for its support. Northampton County Schools is a part of the free public school system and it and the funds provided for its support are subject to the supervision and administration of the State Board of Education.

The State Auditor has the authority and resources to do much of the work that will be required for the State Board of Education to make the investigation requested by the Northampton County Board. The State Board of Education has made known to me that it would be helpful to the State Board to have the benefit of the assistance of the State Auditor in carrying out the investigation.

THEREFORE, as requested by the Northampton County Board of Commissioners and pursuant to Articles III, Sec. 1 and Article IX, Sec. 5 of the Constitution and North Carolina General Statutes §143-158, §143A-25 and §147-64.6(c)(3), it is **ORDERED**:

Section 1: The State Board of Education is hereby designated a Special Commission to investigate alleged shortages in the Northampton

County School's finances and the causes for such shortages and report to me (i) the results of its findings and (ii) its recommendations for remedying whatever shortcomings found.

Section 2: The State Auditor is hereby requested to assist the State Board of Education in its investigation by conducting a Special Investigation and Compliance Audit of the Northampton County Schools for such periods as are found to be indicated for the State Board of Education to discharge its responsibilities hereunder and to do all such other things as appear to the State Auditor to be appropriate to that end and to report the results of the same to the State Board of Education.

Section 3: The Attorney General, the Department of Justice, the State Treasurer, the Local Government Commission and all other agencies of the State called upon to do by the State Board of Education and/or the State Auditor, shall furnish assistance to the State Board and/or the State Auditor in conducting this investigation.

Section 4: This Executive Order shall be effective immediately and shall remain in effect until terminated by me or my successor.

Done in Raleigh, North Carolina, this 22nd day of April, 1991.

EXECUTIVE ORDER NUMBER 141 AMENDING EXECUTIVE ORDER NUMBER 90 GOVERNOR'S ADVISORY COUNCIL ON LITERACY

By the authority vested in me as Governor by the Constitution and laws of North Carolina, it is **ORDERED**:

Executive Order Number 90, as amended by Executive Order Number 104, is hereby amended to add the following member to the Council:

Section 2. Membership

12. One representative of the Department of Human Resources working in early child development to be appointed by the Governor

Executive Order Number 90 is hereby extended until May 18, 1993.

This Executive Order shall become effective immediately.

EXECUTIVE ORDERS

Done in Raleigh, this the 17th day of April,
1991.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26H .0101 - .0104 and .0106 - .0107.

The proposed effective date of this action is September 1, 1991.

The public hearing will be conducted at 1:30 p.m. on June 14, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning these amendments must be submitted by June 14, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

.0101 REIMBURSEMENT PRINCIPLES

Effective October 1, 1984 and each October 1 thereafter all All certified Skilled Nursing and Intermediate Care nursing facilities participating in the North Carolina Medicaid Program are reimbursed on a prospective basis as set forth hereunder. Combination facilities containing both a SNF and ICF portion are treated as two separate facilities for rate setting purposes. This plan is developed in accordance with the requirements of 42 CFR 447 Subpart C - Payment for Inpatient Hospital and Long-Term Care Facility Services. Providers must comply with all federal regulations and with the provisions of this plan.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0102 RATE SETTING METHODS

(a) A rate for each facility is skilled nursing care and a rate for intermediate nursing care are determined annually for each facility to be effective for dates of service for a twelve month period

beginning each October 1. Each patient will be classified in one of the two categories depending on the services needed. Rates are derived from either desk or field audited cost reports for a base year period to be selected by the state. Cost reports are filed and audited under provisions set forth in Rule .0104 of this Section. The criteria for determining the classification of each patient are presented in Appendix I of Attachment 3.1-A of the state plan. The minimum requirements of the 1987 OBRA are met by these provisions.

(b) ~~The~~ Each prospective rate consists of two components: a direct patient care rate and an indirect rate computed and applied as follows:

(1) The direct rate is based on the Medicaid cost per day incurred in the following cost centers:

- (A) Nursing,
- (B) Dietary or Food Service,
- (C) Laundry and Linen,
- (D) Housekeeping,
- (E) Patient Activities,
- (F) Social Services,
- (G) Ancillary Services (includes several cost centers).

(2) To compute each facility's direct rate for skilled care and intermediate care, the direct base year cost per day is increased by adjustment factors for price changes as set forth in Rule .0102(c). A facility's direct rate cannot exceed the maximum rates set for a SNF or ICF. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Payment of such special direct rates shall be made only after specific prior approval of the Division of Medical Assistance.

(A) A facility's direct rates cannot exceed the maximum rates set for skilled nursing or intermediate nursing care. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Payment of such special direct rates shall be made only after specific prior approval of the Division of Medical Assistance.

(B) A standard per diem amount will be added to each facility's direct rate, including facilities that are limited to the maximum rates, for the projected statewide average per diem costs of the salaries paid to replacement nurse aides for those aides in training and testing status and other costs deemed by HCFA to be facility costs related to nurse aide training and testing. The standard amount is based on

the product of multiplying the average hourly wage, benefits, and payroll taxes of replacement nurse aides by the number of statewide hours required for training and testing of all aides divided by the projected total patient days.

- (3) If a facility did not report any costs for either skilled or intermediate nursing care in the base year, the state average direct rate will be assigned as determined in Rule .0102(d) of this Section for the new type of care.

- (4) (2) The direct maximum rates are developed by ranking base-year per diem costs from the lowest to the highest in two separate arrays, one for SNFs skilled care and one for ICFs intermediate care. The per diem cost at the 80th percentile in each array is selected as the base for the maximum rate. The base cost in each array is adjusted for price changes as set forth in Rule .0102(e) of this Section to determine the maximum statewide direct rates for skilled care and intermediate care, rate as set forth in Rule .0102(e).

- (4) Upon completion of any cost reporting year any funds received by a facility from the direct patient care rate which have not been spent on direct patient care costs as defined herein are repaid to the state.

- (5) Effective October 1, 1990, the direct rates will be adjusted as follows: The indirect rate is intended to cover the following costs of an efficiently and economically operated facility:

(A) Administrative and General:

- (A) A standard per diem amount will be added to each facility's skilled and intermediate rate to account for the combined expected average additional costs for the continuing education of nurses, aides; the residents, assessments, plans of care, and charting of nursing hours for each patient; personal laundry and hygiene items; and other non-nursing staffing requirements. The standard amount is equal to the sum of:

- (i) the state average annual salary, benefits, and payroll taxes for one registered nurse position multiplied by the number of facilities in the state and divided by the state total of patient days;

- (ii) the total costs of personal laundry and hygiene items divided by the total patient days as determined from the FY 1989 cost reports of a sample of nursing facilities multiplied by the annual ad-

justment factors described in Rule .0102(c)(4)(B) of this Section; and

- (iii) the state average additional pharmacy consultant costs divided by 365 days and then divided by the average number of beds per facility.

(B) Operation of Plant and Maintenance.

- (B) A standard amount will be added to the intermediate rate of facilities that were certified only for intermediate care prior to October 1, 1990. This amount will be added to account for the additional cost of providing eight hours of RN coverage and 24 hours of licensed nursing coverage. The standard amount is equal to the state average hourly wage, benefits and payroll taxes for a registered nurse multiplied by the 16 additional hours of required licensed nursing staff divided by the state average number of beds per nursing facility. A lower amount will be added to a facility only if it can be determined that the facility's intermediate rate prior to October 1, 1990 already includes licensed nursing coverage above eight hours per day. The add-on amount in such cases would be equal to the exact additional amount required to meet the licensed nursing requirements.

(C) Property Ownership and Use.

- (C) The standard amounts in Subparagraphs (2)(B), (5)(A), and (5)(B) of this Rule, will be retained in the rates of subsequent years until the year that the rates are derived from the actual cost incurred in the cost reporting year ending in 1991 which will reflect each facility's actual cost of complying with all OBRA '87 requirements.

(D) Mortgage Interest.

- (6) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates are fourteen dollars and sixty cents (\$14.60) for each SNF day of care and thirteen dollars and fifty cents (\$13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that will be paid in subsequent years under this plan as provided in this Rule.

- (6) Upon completion of any cost reporting year any funds received by a facility from the direct patient care rates which have not been spent on direct patient care costs as defined herein are repaid to the State. This will be applied by comparing a facil-

- ity's total Medicaid direct costs with the combined direct rate payments received for skilled and intermediate care. However, any skilled and intermediate care Medicaid costs in excess of an amount equal to the skilled or intermediate maximum rates established in Rule .0102(b)(4) of this Section multiplied by the facility's skilled or intermediate Medicaid days are not reimbursable and must be excluded from the calculation of a repayment amount.
- (7) Effective for dates of service beginning October 1, 1985 and annually thereafter per diem indirect rates will be computed as follows: The indirect rate is intended to cover the following costs of an efficiently and economically operated facility:
- (A) Administrative and General.
 - (A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents (\$13.02)] will be the base rate.
 - (B) The base rate will be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates will apply in accordance with the procedure set forth in Rule .0102(c) below to establish the ICF per diem indirect rate.
 - (C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment is made to recognize the additional administrative expense incurred in the provision of SNF patient care.
 - (B) Operation of Plant and Maintenance.
 - (C) Property Ownership and Use.
 - (D) Mortgage Interest.
- (8) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates are fourteen dollars and sixty cents (\$14.60) for each SNF day of care and thirteen dollars and fifty cents (\$13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that will be paid in subsequent years under this plan as provided in this Rule.
- (9) Effective for dates of service beginning October 1, 1985 and annually thereafter per diem indirect rates will be computed as follows:
- (A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents (\$13.02)] will be the base rate.
 - (B) The base rate will be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates will apply in accordance with the procedure set forth in Rule .0102(c) of this Section to establish the ICF per diem indirect rate.
 - (C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment is made to recognize the additional administrative expense incurred in the provision of SNF patient care.
- (10) Effective for dates of service beginning October 1, 1989, a standard per diem amount will be added to provide for the additional administrative costs of preparing for and complying with all nursing home reform requirements. The standard amount is based on the average annual salary, benefits and payroll taxes of one clerical position multiplied by the number of facilities in the state divided by the state total of patient days.
- (11) Effective for dates of service beginning October 1, 1990, the indirect rate will be standard for skilled and intermediate care for all facilities and will be determined by applying the 1990-91 indirect cost adjustment factors in Rule .0102(c) of this Section to the indirect rate paid for SNF during the year beginning October 1, 1989. Thereafter the indirect rate will be adjusted annually by the indirect cost adjustment factors.
- (c) Adjustment factors for changes in the price level. The rate bases established in Rule .0102(b), are adjusted annually to reflect increases or decreases in prices that are expected to occur from the base year to the year in which the rate applies. The price level adjustment factors are computed using aggregate base year costs in the following manner:
- (1) Indirect cost and direct costs will be separated into two categories. Costs will be separated into direct and indirect cost categories.
 - (2) Costs in each category will be accumulated into the following groups:
 - (A) labor,
 - (B) other,
 - (C) fixed.
 - (3) The percent of costs within each category (ICF or SNF) in each group will be ascertained to the second decimal point. This percent shall become the "weight" for each group of costs within each category. The relative weight of each cost

group is calculated to the second decimal point by dividing the total costs of each group (labor, other, and fixed) by the total costs for each category (direct and indirect).

- (4) Price adjustment factors for each cost group will be established using official estimates of price level changes supplied by the North Carolina Office of Budget and Management no earlier than 120 days prior to the date on which the new reimbursement rates shall go into effect. These factors shall include: as follows:

- (A) Labor. The expected annual percentage change in North Carolina service wages modified for any special factors relating to nursing homes that can be explicitly identified. direct labor costs as determined from a survey of nursing facilities to determine the average hourly wages for RNs, LPNs, and aides paid in the current year and projected for the rate year. The percentage change for indirect labor costs is based on the projected average hourly wage of N.C. service workers.

- (B) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.

- (C) Fixed. No adjustment will be made for this category, thus making the factor zero.

- (D) The weights computed in (c)(3) of this Rule shall be multiplied times the factors computed in (c)(4) of this Rule. These products shall be added separately in each category.

- (E) The sum computed for each category in (c)(4)(D) of this Rule shall be the price level adjustment factor for that category of rates (direct or indirect) for the coming fiscal year.

- (F) The adjustment factor computed in (c)(4)(E) of this Rule shall be multiplied times the product of all preceding annual price level adjustment factors computed since the base year. This becomes the composite factor by which the base rates are adjusted to produce the direct and indirect rates that will apply in the next fiscal year.

(d) For new facilities enrolled on or after October 1, 1984 the direct patient care rate is established at the average of industry base year costs for the appropriate level of care and is adjusted for price changes as set forth in Rule .0102(c). A new facility receives the indirect rate in effect

at the time the facility is enrolled in the Medicaid Program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(d) The skilled and intermediate direct patient care rates for new facilities are established at the lower of the projected costs in the provider's Certificate of Need application inflated to the current rate period or the average of industry base year costs and adjusted for price changes as set forth in Rule .0102(c) of this Section. A new facility receives the indirect rate in effect at the time the facility is enrolled in the Medicaid program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(e) Each out-of-state provider is reimbursed at the lower of the appropriate North Carolina maximum rate or the provider's payment rate as established by the State in which the provider is located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate may be negotiated.

(f) Rates:

- (1) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components can be negotiated for nursing facilities that specialize in providing intensive services for head-injured or ventilator-dependent patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. For head-injury services, a facility must specialize to the extent of staffing at least 50 percent of its Nursing Facility licensed beds for head-injury services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF). For ventilator services, the only facilities that are eligible for a combined single rate are small freestanding facilities with less than 21 Nursing Facility beds and that serve only patients requiring ventilator services. Ventilator services provided in larger facilities are reimbursed at higher direct rates as described in Rule .0102(b)(2)(A) of this Section.

- (2) A facility's initial rate is negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. A complete description of the facility's medical program must also be provided. Rates in subsequent years are determined by applying the average annual skilled nursing care adjustment factors to the rate in the previous year, unless

either the provider or the State requests a renegotiation of the rate.

- (3) Cost reports for these services must be filed in accordance with the rules in .0104 of this Section, but there will be no cost settlements for any differences between costs and payments. Since it is appropriate to include all financial considerations in the negotiation of a rate, a provider will not be eligible to receive separate payments for return on equity as defined in Rule .0105 of this Section.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0103 REASONABLE AND NON-ALLOWABLE COSTS

(a) Providers have an affirmative responsibility to operate economically and efficiently so that their costs are reasonable. Providers are required to provide services at the lowest possible costs in compliance with Federal and State laws, regulations for licensing and certification, and standards for quality of care and patients' safety. Providers are also responsible for the financial actions of their agents (e.g., management companies) in this regard.

(b) The state may publish guidelines to define reasonable costs in certain areas after careful study of industry-wide cost conditions.

(c) The following costs are considered non-allowable facility costs because they are not related to patient care or are specifically disallowed under the North Carolina State Plan:

- (1) bad debts;
- (2) advertising--except personnel want ads, and one line yellow page (indicating facility address);
- (3) life insurance (except for employee group plans);
- (4) interest paid to a related party;
- (5) contributions, including political or church-related, charity and courtesy allowances;
- (6) prescription drugs and insulin (available to recipients under State Medicaid Drug Program);
- (7) vending machine expenses;
- (8) barber and beauty shop expenses; personal grooming other than haircuts, shampooing and nail trimming performed by facility staff;
- (9) state or federal corporate income taxes, plus any penalties and interest;
- (10) telephone, ~~or~~ television, or radio for personal use of patient;

- (11) penalties or interest on income taxes;
- (12) dental expenses--except for consultant fees as required by law;
- (13) personal income taxes, plus any penalties and interest;
- (14) farm equipment and other expenses;
- (15) retainers, unless itemized services of equal value have been rendered;
- (16) physicians fees for other than utilization review or medical directors or medical consultants as required by law;
- (17) country club dues;
- (18) sitter services or private duty nurses;
- (19) finer or penalties for violations; capital expenditures subject to either section 1122 or certificate of need review not receiving prior approval by the appropriate state agency;
- (20) conversions, leases, and management agreements not reviewed by the appropriate state agency;
- (21) guest meals;
- (22) morgue boxes;
- (23) leave days--except therapeutic leave;
- (24) personal items and clothing; laundering of personal clothing; and
- (25) any other items which, under the given circumstances, are considered to be non-allowable.
- (24) any costs in excess of the maximum rates established in Rule .0102(b)(4) of this Section and costs in excess of a facility's total prospective rate payments;
- (25) costs that are billable to Medicare.

(d) For those non-allowable expenses which generate income, such as prescription drugs, vending machines, barber and beauty shop, etc., expense should be identified as a non-reimbursable cost center, where determinable. If the provider cannot determine the proper amount of expense which is to be identified, then the income which was generated must be offset in full to the appropriate cost center.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0104 COST REPORTING: AUDITING AND SETTLEMENTS

(a) Each facility that receives payments from the North Carolina Medicaid Program must prepare and submit a report of its costs and other financial information requested by the state (such as the working trial balance) related to reimbursement annually. The report must include costs from the fiscal period beginning on October 1 and ending on September 30 and must be sub-

mitted to the state on or before the December 31 that immediately follows the September 30 year end. A new provider must submit a report for the period beginning with the date of certification and ending on September 30. Facilities that fail to file their cost reports by the due date are subject to payment suspension until the reports are filed. The Division of Medical Assistance may extend the deadline 30 days for filing the report if, in its view, good cause exists for the delay.

(b) Cost report format. The cost report must be submitted on forms and in a format and medium approved by the Division of Medical Assistance. The account structure for the report is based on the chart of accounts published by the American Healthcare Association in 1979 but amended or modified to the extent necessary to meet the special reimbursement requirements of this plan. The Division of Medical Assistance will make one copy of the cost report format available to each facility (combination facilities receive only one) on or before July 1 of the reporting year for which the report is to be filed.

(c) Cost finding and allocation. Costs must be reported in the cost report in accordance with the following rules and in the order of priority stated.

- (1) Costs must be reported in accordance with the specific provisions of this plan as set forth in this Rule.
- (2) Costs must be reported in conformance ~~to Title XVIII principles of reimbursement~~ with the Medicare Provider Reimbursement Manual, HCFA 15.
- (3) Costs must be reported in conformance with Generally Accepted Accounting Principles.

(d) The specific cost reporting guidelines related to this plan are set forth in the following Paragraphs. The state will publish guidelines, consistent with the provisions of this plan, concerning the proper accounting treatment for items described in this Rule as related operating expenses. ~~These guidelines will be issued prior to April 1, 1985.~~ The guidelines may be ~~subsequently~~ modified prior to the beginning of each cost reporting period. In no case, however, shall any modifications be applied retroactively. A provider should request clarification in writing from the state if there is uncertainty about the proper cost center classification of any particular expense item.

- (1) Nursing Cost Center includes the cost of nursing staff, medical supplies, and related operating expenses needed to provide nursing care to patients, including medical records (including forms), utilization review, the Medical Director and the Phar-

macy Consultant. ~~Also, the cost (rental or purchase) of special equipment that is medically required to sustain life may be charged to this cost center. Such equipment shall include oxygen concentrators, respirators and ventilators. The amount of nursing time provided to each patient must be recorded in order to allocate nursing cost between skilled and intermediate nursing care.~~

- (2) Dietary Cost Center includes the cost of staff, raw food, and supplies needed to prepare and deliver food to patients.
- (3) Laundry and Linen Cost Center includes the cost of staff, bed linens (replacement mattresses and related operating expenses needed to launder facility-provided items).
- (4) Housekeeping Cost Center includes the cost of staff and supplies needed to keep the facility clean.
- (5) Patient Activities Cost Center includes the cost of staff, supplies, and related operating expenses needed to provide appropriate diversionary activities for patients.
- (6) Social Services includes the cost of social workers and related operating expenses needed to provide necessary social services to patients.
- (7) Ancillary Cost Center includes the cost of all therapy services covered by the Medicaid program and billable medical supplies. Providers must bill Medicare Part B for those ancillary services covered under the Medicare B program. Ancillary cost centers include: Radiology, Laboratory, Physical Therapy, Occupational Therapy, Speech Therapy, Oxygen Therapy, Intravenous Fluids, Billable Medical Supplies, Parenteral Enteral Therapy and life sustaining equipment, such as oxygen concentrators, respirators, and ventilators and other specifically approved equipment.
- (8) Administrative and General Cost Center includes all costs needed to administer the facility including the staff costs for the administrator, assistants, billing and secretarial personnel, personnel director and pastoral expenses. It includes the costs of copy machines, dues and subscriptions, transportation, income taxes, legal and accounting fees, start-up, and a variety of other administrative costs as set forth in the Chart of Accounts. Interest expense other than that stemming from mortgages or loans to acquire physical plant items should be reported here.

- (9) Property Ownership and Use:
- (A) This cost center includes all allowable costs related to the acquisition and/or use of the physical assets including building, fixed equipment and movable equipment, that are required to deliver patient care, except the special equipment, as specified in .0104(d)(1) of this Rule that may be charged to the nursing life-sustaining equipment cost center. Specifically it includes the following items:
- (i) all equipment expense regardless of equipment nature,
 - (ii) lease expense for all physical assets,
 - (iii) depreciation of assets utilizing the straight line method,
 - (iv) interest expense of asset related liabilities, (e.g., mortgage expense),
 - (v) property taxes.
- (B) For the purposes of computing allowable lease expense and for balance sheet presentation for Return on Equity computations (see Rule .0105), leases shall not be capitalized.
- (C) In establishing the allowable cost for depreciation and for interest on capital indebtedness, with respect to an asset which has undergone a change of ownership, the valuation of the asset shall be the lesser of allowable acquisition cost less accumulated depreciation to the first owner of record on or after July 18, 1984 or the acquisition cost to the new owner. Depreciation recapture will not be performed at sale. The method for establishing the allowable related capital indebtedness shall be as follows:
- (i) The allowable asset value shall be divided by the actual acquisition cost.
 - (ii) The product computed in step 1 shall be multiplied times the value of any related capital indebtedness.
 - (iii) The result shall be the liability amount upon which interest may be recorded at the rate set forth in the debt instrument or such lower rate as the state may prove is reasonable.
- The allowable asset and liability values established through the process in this Rule shall be those used in balance sheet presentations for return on equity computation (see Rule .0105). These procedures are established to implement the provisions of PL 98-369 Section 2314.
- (10) Operation of Plant and Maintenance Cost Center includes all costs necessary to operate or maintain the functionality and appearance of the plant. These include: maintenance staff, utilities, repairs and maintenance to all equipment.
- (11) Equipment Expense. Equipment is defined as an item with a useful life of more than two years and a value greater than ~~two~~ five hundred dollars ~~(\$200.00)~~ (\$500.00). Equipment ownership and use costs shall be reported in the Property Ownership and Use Cost Center. Equipment maintenance and repair costs shall be reported in the Operation of Plant and Maintenance Cost Center. Equipment should not be reported elsewhere.
- (12) Training Expense. Training expense ~~shall be allocated to must be identified in~~ the appropriate benefiting cost center. ~~centers. Adequate records to support the allocation shall be maintained and presented upon request to establish allowability.~~ The costs of training nurse aides must be identified separately and may include the cost of purchasing programs and equipment that have been approved by the State for training or testing.
- (13) Home Office Costs. Home office costs are generally charged to the Administrative and General Cost Centers. In some cases, however, certain personnel costs which are direct patient care oriented may be allocated to "direct" patient care cost centers if time records are maintained to document the performance of direct patient care services. No Home office overhead may be so allocated. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:
- (A) specific time records of work performed at each facility, or
 - (B) patient days in each facility to which the costs apply relative to the total patient days in all the facilities to which the costs apply.
- (14) Management Fees. Management fees are charged to the Administrative and General Cost Center. In some cases, however, a portion of a management fee may be allocated to a direct patient care cost center if time records are maintained to document the performance of direct patient care services. The amount so allocated may be equal only to the salary and fringe benefits of persons who are performing direct patient care services while employed by the management company. Adequate records to support these costs must be made available to staff of the Division of

Medical Assistance to support these costs. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:

- (A) specific time records of work performed at each facility; or
- (B) patient days in each facility to which the costs apply relative to the total patient days in all the facilities to which the costs apply.

- (15) Related Organization Costs. Allowable costs of related organizations are to be identified in accordance with the direct and indirect cost center categories. The intent is to treat the costs incurred by the related organization as if they were incurred by the provider itself. Related organization's costs applicable to direct cost centers (Nursing, Dietary, Laundry and Linen, Housekeeping, Social Services, Patient Activities, and Ancillary Services) must be identified in the applicable direct cost center. Related organization's costs applicable to indirect cost centers (Property, Ownership and Use, Operation and Maintenance of Plant, and Administrative and General) must be identified in the applicable indirect cost center. Adequate records to support these costs must be made available to staff of the Division of Medical Assistance and its designated contract auditors.

(e) Auditing and Settlement. All filed cost reports must be desk audited and interim reimbursement settlements made in accordance with the provision of this plan. This settlement is issued within 180 days of the date the cost report was filed or within 180 days of December 31 of the fiscal year to which the report applies, whichever is later. The state may elect to perform field audits on any filed cost reports within three years of the date of filing and issue a final settlement on a time schedule that conforms to Federal law and regulation. If the state decides not to field audit a facility a final reimbursement notice may be issued based on the desk audited settlement. The state may reopen and field audit any cost report after the final settlement notice to comply with Federal law and regulation or to enforce laws and regulations prohibiting abuse of the Medicaid Program and particularly the provisions of this reimbursement plan.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0106 APPEALS

(a) Providers may request a reconsideration review of ~~their rate~~ agency reimbursement determinations. ~~These reconsideration reviews will be processed according to procedures set forth in 40 NCAC 26K.~~ A provider may request a reconsideration review within 30 calendar days from receipt of final notification of payment, payment denial, disallowances, payment adjustments, notice of program reimbursement and adjustments and within 60 calendar days from receipt of notice of an institutional reimbursement rate. Following the review the agency will render a decision in writing which will be sent by certified mail. If the provider disagrees with the reconsideration review decision, the provider may request a contested case hearing with the N. C. Office of Administrative Hearings.

(b) Indirect rates shall not be adjusted on ~~reconsideration review.~~ appeal.

(c) A direct rate may be adjusted on ~~reconsideration review~~ appeal if the a provider can establish to the satisfaction of the state agency that such an adjustment is necessary to protect the health and safety of its patients and to sustain its financial viability. A facility is considered to be financially viable, and therefore not eligible for a rate adjustment, if its total Medicaid rate payments and return on equity exceeded its total Medicaid cost as reported in the most recent cost report available. Providers are expected to utilize all available funds to provide the services that their patients need. Once a provider has reported a loss for a certain year, a direct rate of adjustment can then be negotiated for the following year at a level no greater than what is absolutely necessary for patient care and for the financial viability of the facility. The adjusted rate cannot exceed the applicable maximum direct rate as established by Rule .0102(b)(3).

(d) Direct rates may also be adjusted ~~to~~ without regard to the provisions of Rule .0106(c) of this Section for the following reasons:

- (1) to correct erroneous data in the rate base;
- (2) to accommodate any changes in the levels of prices minimum standards or minimum levels of resources required in the provision of patient care that are mandated by state or federal laws or regulation;
- (3) to maintain services at levels commensurate with any rate adjustments that are allowed between the base year and the year in which the rates derived from that base year are first effective.

(e) Adjustments to reimbursement settlements shall be made on the basis of the reimbursement principles set forth in this plan or incorporated here by reference [See Rule .0104(e)].

PROPOSED RULES

Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0107 PAYMENT ASSURANCE

(a) The state will pay each provider of nursing care services, who furnishes the services in accordance with the requirements of the State Plan and the participation agreement, the amount determined under the plan. In addition, ~~Skilled~~ Nursing Facilities must be enrolled in the Title XVIII Program.

(b) In no case shall the payment rate for services provided under the plan exceed the facility's customary charges to the general public for such services.

(c) The payment methods and standards set forth herein are designed to enlist the participation of any provider who operates a facility both economically and efficiently. Participation in the program shall be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the State Plan. This reimbursement plan is effective consistent with and on approval of the State Plan for Medical Assistance.

(d) In all circumstances involving third party payment, Medicaid is the payor of last resort. No payment will be made for a Medicaid recipient who is also eligible for Medicare, Part A, for the first 20 days of care rendered to skilled nursing patients. Medicaid payments for co-insurance for such patients will be made for the subsequent 21st through the 100th day of care. In the case of ancillary services providers are obligated to:

- (1) maintain detailed records or charges for all patients;
 - (2) bill the appropriate Medicare Part B carrier for all services provided to Medicaid patients that may be covered under that program; ~~and~~
 - (3) allocate an appropriate amount of ancillary costs, based on these charge records adjusted to reflect Medicare denials of coverage, to Medicare Part B in the annual cost report; and
 - (4) failure to properly bill Medicare or other third-party payors will result in the disallowance of any related cost claimed as Medicaid cost.
- (e) The state may withhold payments to providers under the following circumstances:
- (1) If the state has a reasonable expectation that the provider will not expend its direct rate for reasonable and allowable direct patient care costs, the state may, at its discretion, withhold a portion of each payment so as

to avoid a large amount due back to the state upon reimbursement settlement pursuant to the provision of Paragraph .0104(e) of this Section.

- (2) Upon provider termination the state may withhold a sum of money from provider payments that it reasonably expects will be due when final reimbursement settlements for all previous periods, including the period in which the termination occurred, are completed.
- (3) Upon determination of any sum due the Medicaid Program or upon instruction from a legally authorized agent of the State or Federal Government the state may withhold sums to meet the obligations identified.
- (4) The state may arrange repayment schedules within the limits set forth in federal regulations in lieu of withholding funds.
- (5) The state may charge reasonable interest or overpayments from the date that the overpayment occurred.
- (6) The State may withhold 20 percent per month of a provider's payment for failure to file a timely cost report. These funds will be released to the provider after a cost report is acceptably filed. The provider will experience delayed payment while the check is routed to the State and split for the 20 percent withholding.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 50B .0204.

The proposed effective date of this action is September 1, 1991.

The public hearing will be conducted at 1:30 p.m. on May 31, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning this amendment must be submitted by May 31, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, ATTN.: Bill Hottel, APA Coordinator.

Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0200 - APPLICATION PROCESS

.0204 EFFECTIVE DATE OF ASSISTANCE

(a) Medicaid coverage shall be effective as follows:

- (1) The month of application; or
- (2) As much as three months prior to the month of application when the client received medical services covered by the program and was eligible during the month or months of medical need; or
- (3) If the client applies prior to meeting a non-financial requirement, Medicaid shall begin no earlier than the calendar month in which all non-financial requirements are met; or
- (4) For pregnancy related services under M-PW, the ~~first month following the month of application in which countable income is equal to or less than the income standard.~~ month of application or as much as three months prior to the month of application in which all eligibility requirements are met in the month or months.

Authority G.S. 108A-54; 42 C.F.R. 435.914; 42 C.F.R. 435.919.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0309.

The proposed effective date of this action is January 1, 1992.

The public hearing will be conducted at 7:00 p.m. on July 23, 1991 at the Auditorium, Montgomery Community College, Old Biscoe Road, Troy, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend. Comments,

statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information contact Suzanne H. Keen, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-5083.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0309 YADKIN-PEE DEE RIVER BASIN

(c) The Yadkin-Pee Dee River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 12, 1979;
- (2) March 1, 1983;
- (3) August 1, 1985;
- (4) February 1, 1986;
- (5) October 1, 1988;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) August 1, 1990;
- (9) January 1, 1992.

(g) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective January 1, 1992 as follows:

- (1) Little River [Index Nos. 13-25-(10) and 13-25-(19)] from Suggs Creek to Densons Creek was reclassified from Classes WS-III and C to Classes WS-III HQW and C HQW.
- (2) Densons Creek [Index No. 13-25-20-(1)] from its source to Troy's Water Supply Intake including all tributaries was reclassified from Class WS-III to Class WS-III HQW.
- (3) Bridgers Creek (Index No. 13-25-24) from its source to the Little River was reclassified from Class C to Class C HQW.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management

PROPOSED RULES

Commission intends to amend rule cited as 15A NCAC 2B .0312.

The proposed effective date of this action is January 1, 1992.

The public hearing will be conducted at 7:00 p.m. on July 25, 1991 at the Auditorium, Carteret Community College, 3505 Arendell Street, Morehead City, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information contact Suzanne H. Keen, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-5083.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0312 WHITE OAK RIVER BASIN

(b) The White Oak River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) December 13, 1979;
- (2) June 1, 1988;
- (3) January 1, 1990;
- (4) August 1, 1990;
- (5) August 1, 1991;
- (6) January 1, 1992.

(e) The Schedule of Classifications and Water Quality Standards for the White Oak River Basin was amended effective January 1, 1992 with the reclassification of Peletier Creek (Index No. 20-36-11) from its source to Bogue Sound from Class SA to Class SB with the requirement that no discharges be allowed.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10A .1001.

The proposed effective date of this action is September 1, 1991.

The public hearing will be conducted at 10:00 a.m. on June 18, 1991 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from June 3, 1991 to July 3, 1991. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION

SECTION .1000 - WARNING TICKETS

.1001 PARTICULAR OFFENSES

(b) Warning Tickets Permitted. Where there is a contemporaneous occurrence of more than three violations of the motorboat statutes or administrative rules, Wildlife Enforcement Officers may issue a citation on the two most serious violations and a warning ticket on the lesser violation(s). In addition, Wildlife Enforcement Officers may issue warning tickets for the following offenses:

- (1) Boating Violations:
 - (A) number missing, lack of contrast, not properly spaced or less than three inches in height;
 - (B) no validation decal affixed or incorrect placement;
 - (C) fire extinguisher not charged or non-approved;
 - (D) no fire extinguisher on boats with false bottoms not completely sealed to hull or filled with flotation material;
 - (E) failure to notify North Carolina Wildlife Resources Commission of change of address of boat owner;
 - (F) personal flotation device not Coast Guard approved;

- (G) failure to display navigation lights when there is evidence that lights malfunctioned while underway;
- (H) no sound device (on Class I boats only);
- (I) muffler not adequate;
- (J) loaded firearm on access area;
- (K) parking on access area in other than designated parking area, provided traffic to ramp not impeded;
- (L) motorboat registration expired ten days or less;
- (M) no Type IV throwable personal flotation device on board, but other personal flotation device requirements met;
- (N) violation of no-wake speed zone when mitigating circumstances present.

Statutory Authority G.S. 113-140.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10C .0305.

The proposed effective date of this action is September 1, 1991.

The public hearing will be conducted at 10:00 a.m. on June 17, 1991 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from June 2, 1991 to July 2, 1991. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0300 - GAME FISH

.0305 OPEN SEASONS: CREEL AND SIZE LIMITS

- (b) Exceptions
 - (6) In the inland and joint waters of the coastal rivers and their tributaries extend-

ing upstream to the first impoundment, or to the headwaters, if unimpounded, the daily creel limit for striped bass and their hybrids is three fish. No striped bass between the lengths of 22 inches and 27 inches, both inclusive, may be retained from April 1 through May 31, ~~and no fish may be retained from May 22 to December 31, 1990.~~ except no fish may be retained in Roanoke River and its tributaries including Cashie, Middle and Eastmost rivers from May 1 to December 31, 1991.

Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to amend rules cited as 16 NCAC 6C .0307 and .0401.

The proposed effective date of this action is October 1, 1991.

The public hearing will be conducted at 9:30 a.m. for 16 NCAC 6C .0307 and 10:30 a.m. for 16 NCAC 6C .0401 on June 14, 1991 at Third Floor Conference Room, Education Building, 116 West Edenton Street, Raleigh, North Carolina 27603-1712.

Comment Procedures: Any interested person may present views and comments either in writing prior to or at the hearing or orally at the hearing.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0300 - CERTIFICATION

.0307 CERTIFICATE RENEWAL

(a) Certificates are valid for a period of five years from the effective date of issuance. Holders must renew their certificates within each five-year period. The department applies renewal credit to the person's certificate field(s) and or professional duties.

(b) The department bases renewal or reinstatement of a certificate on 15 units of renewal credit. A unit of credit is equal to one quarter hour or two-thirds of a semester hour of IHE

credit, or one school year of teaching experience. The department will not record less than one credit on a certificate.

(c) Currently employed personnel shall maintain a professional growth plan in accordance with department guidelines. These persons may obtain renewal credit for the following activities:

- (1) college or university credit activities;
- (2) teaching experience (one unit for every year);
- (3) local in-service courses or workshops which carry at least one unit of renewal credit and which meet the following criteria:
 - (A) ten clock hours of direct training by the instructor ~~per unit will equal one unit~~ of renewal credit; ~~over a period of a least two days, but no more than six clock hours per day;~~
 - (B) content and instructional activities designed in a sequential manner to develop specified competencies of a specific population;
 - (C) led by qualified instructional personnel and directly supervised by the sponsoring school unit;
 - (D) Credit is granted on the basis of program completion and achievement of specified individual performance, which is determined by individual evaluation for specified competencies;
 - (E) enrollment limited to assure accountability of credit granted;
- (4) independent study of no more than five units of renewal credit per five-year renewal period which meets the following criteria:
 - (A) teachers and other certified personnel help to develop local independent study procedures which the superintendent keeps on file and periodically sends to each certified employee;
 - (B) the employee and the superintendent or his or her designee plan the experience in advance, including identification of competencies to be acquired and an evaluation to determine satisfactory achievement of those competencies; and
 - (C) the amount of credit awarded is related to the complexity of the competencies to be achieved;
- (5) activities approved by the department.

(d) Each LEA and approved governing boards of schools are responsible for assuring that all local courses and workshops and independent study activities which do not carry IHE credit meet the standards contained in this Rule.

(e) Agencies which the department authorizes to administer renewal requirements locally shall adopt a procedure to determine the appropriateness of credit in advance of the renewal activity. In determining appropriateness the agency must consider direct relationship to critical job responsibilities, suitability of the content level and properly established credit for the activity. Each agency must report on participation in and effectiveness of renewal activities as the department requests.

(f) Persons who hold a North Carolina certificate but who are not currently employed in the public schools or by approved boards may earn renewal credit in college or university credit activities, or local courses and workshops or activities approved by the department if they are admitted on a space available basis. The department will determine the appropriateness of the credits on the basis of the direct relationship to the certificate field, the suitability of the content level and properly established credits for the activity.

(g) The department will approve in advance activities which are not established for certificate renewal by LEAs or which do not carry regular IHE credit, but which are offered for renewal credit.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

SECTION .0400 - LEAVE

.0401 VACATION LEAVE

(a) All full-time or part-time permanent public school employees who are working or on paid leave for at least one-half of the calendar days in a month earn vacation leave, based on length of aggregate state service in North Carolina.

(b) A part-time permanent employee in a budgeted position earns vacation leave on a pro rata basis.

(c) Employees earn vacation leave as follows:

Yrs. of Aggregate State Service	Days Per Month of Employment
Less than 2 yrs.	1.00
2 but less than 5 yrs.	1.15
5 but less than 10 yrs.	1.40
10 but less than 15 yrs.	1.65
15 but less than 20 yrs.	1.90
20 yrs. or more	2.15

(d) LEAs credit ~~aggregate~~ state service for full-time or part-time permanent employment figured on the same basis as for longevity pay. The LEA

must establish the anniversary date for each employee on the basis of the employee's ~~aggregate~~ state service.

(e) The LEA may advance vacation leave to an employee.

(f) The LEA transfers unused vacation leave when an employee transfers between LEAs. An employee may have leave transferred to or from a state agency or institution, community college or technical institute, a position subject to the State Personnel Act in a local mental health, public health, social services or emergency management agency, if the receiving agency is willing to accept the leave; otherwise, the employee will be paid in a lump sum for accumulated leave not to exceed 30 workdays.

(g) Leave payment at separation is subject to the following:

- (1) An employee who is overdrawn on leave when he or she separates will have the excess leave corrected through a deduction from the final salary check.
- (2) Payment for leave may be made on the regular payroll or on a supplemental payroll. The LEA makes payment from the same source of funds and in the same proportion as the employee's salary is paid.
- (3) Terminal leave payment is subject to the same deductions as salary, including retirement.
- (4) The receipt of lump sum leave payment and retirement benefit is not dual compensation.
- (5) The LEA makes payment for unpaid salary, terminal leave and travel of a deceased employee to the personal representative of the deceased employee, or if there is no personal representative, to the Clerk of Superior Court of the county in which the employee resided.

(h) Each LEA shall maintain leave records for all employees. LEAs must inform employees of their leave balances at least once a year. LEAs must retain leave records for separated employees for at least five years from the date of separation.

(i) Leave must be taken in minimum units of one-half or whole days.

(j) Instructional personnel and school bus drivers may not take vacation leave on days when students are scheduled to be in attendance. These persons may take vacation leave instead of sick leave on days when students are not scheduled to attend. LEAs may designate specific scheduled workdays for required attendance as long as employees have an opportunity to take annual leave earned during the school year. Employees may charge leave taken only to

scheduled teacher workdays and the ten vacation leave days scheduled in the school calendar.

(k) Other employees may take vacation leave instead of sick leave. These employees must have an opportunity to take annual leave earned in the school year.

Statutory Authority G.S. 115C-272; 115C-285; 115C-302; 115C-316.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina State Board of Certified Public Accountant Examiners intends to repeal rule(s) cited as 21 NCAC 8G .0306.

The proposed effective date of this action is October 1, 1991.

The public hearing will be conducted at 10:00 a.m. on June 24, 1991 at the N.C. State Board of CPA Examiners, 1101 Oberlin Road, Ste. 104, Raleigh, NC 27605.

Comment Procedures: Any person interested in this rule may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the Board office not later than Wednesday, June 12, 1991. Anyone planning to attend the hearing should notify the Board office by 5:00 p.m. on Wednesday, June 12, 1991, and state whether they wish to speak on the proposal and whether they will speak in favor of the proposal or against it. Anyone speaking on the proposal will be limited to 10 minutes.

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

SUBCHAPTER 8G - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0300 - OTHER RESPONSIBILITIES

.0306 FIRM NAME OR STYLE OF A PRACTICE (REPEALED)

Statutory Authority G.S. 55B-5; 93-12(9).

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Phar-

macy intends to amend rules cited as 21 NCAC 46 .2201, .2502, .2605; and adopt rule cited as 21 NCAC 46 .2602 (Existing Rules .2602 through .2607 will be renumbered as Rules .2603 through .2608), .2901 - .2902.

The proposed effective date of this action is October 1, 1991.

The public hearing will be conducted at 2:00 p.m. on June 25, 1991 at the Holiday Inn Four Seasons, Greensboro, North Carolina.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule or rule change may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address: P.O. Box 499, Carrboro, NC 27510. Any person may file a written submission of comments or argument at any time up to and including July 8, 1991.

CHAPTER 46 - BOARD OF PHARMACY

SECTION .2200 - CONTINUING EDUCATION

.2201 HOURS: RECORDS: PROVIDERS:

CORRESPONDENCE: RECIPROCITY

(d) Continuing education obtained for renewal of a license to practice pharmacy shall include at least two hours of credit for programs on impairment issues over a two year period. Pharmacists residing in North Carolina shall obtain such hours from a program approved by the Pharmacist Recovery Network and organized or sponsored by the North Carolina Pharmaceutical Association, the North Carolina Society of Hospital Pharmacists, the University of North Carolina at Chapel Hill, or Campbell University.

(e) ~~(d)~~ Continuing education shall not serve as a barrier to reciprocity; however all licensees by reciprocity must observe the continuing education standards specified in (a), (b) and (c) of this Rule within the first renewal period after licensure in this state and the continuing education standard specified by Paragraph (d) of this Rule within two years after licensure in this state.

Statutory Authority G.S. 90-85.6; 90-85.17; 90-85.18.

SECTION .2500 - MISCELLANEOUS PROVISIONS

.2502 RESPONSIBILITIES OF PHARMACIST-MANAGER

(j) Any incident which unexpectedly produces serious or permanent injury or death that involves a drug or device dispensed from any location holding a permit shall be promptly reported in writing to the Board by the pharmacist-manager or person in charge.

(k) It is the pharmacist-manager's responsibility to separate from their dispensing stock all drug products more than six months out of date.

Statutory Authority G.S. 90-85.6; 90-85.21.

SECTION .2600 - DEVICES

.2602 DISPOSABLE DEVICE

Disposable device means a device for single use and capable of easy disposal with negligible loss or labeled as disposable, and ordinarily intended to be used and discarded within a week, such as IV administration sets.

Statutory Authority G.S. 90-85.3(e); 90-85.6.

Note: Existing Rules .2602 through .2607 will be renumbered as .2603 through .2608.

.2605 RECORDS

All orders and records for devices shall conform in all pertinent respects with Board Rules .2301 through .2305 of this Chapter. In addition to the requirements of those rules, the serial numbers for all devices dispensed to outpatients shall be preserved as part of the records; provided, that this requirement shall not apply to disposable devices. Disposable devices and devices used for administration of drugs are exempt from the record keeping provisions of this Section.

Statutory Authority G.S. 90-85.3(e),(r); 90-85.6; 90-85.22; 90-85.26.

SECTION .2900 - PRODUCT SELECTION

.2901 REPACKAGED PHARMACEUTICALS

A prescription written for a drug product resulting from repackaging of a specific generic drug product by a distributor, repackager, or another manufacturer, may be dispensed as an order for either the specific generic drug product or the repackaged product.

Statutory Authority G.S. 90-85.6; 90-85.21.

.2902 RETURN OF OUTDATED DRUGS

Adequate provisions for return of outdated drugs both full and partial containers as provided in G.S. 90-85.28(a)(5) means that drugs can be returned up to six months after the labeled expiration date for prompt full credit or replacement.

A finding by the Board that a manufacturer does not meet this standard will cause that manufacturer's products to be ineligible for use in product selection.

Statutory Authority G.S. 90-85.6;
90-85.28(a)(5).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Examiners of Practicing Psychologists intends to amend rule(s) cited as 21 NCAC 54 .1701, .1703 - .1704, .1802 - .1803, .1902 - .1904, .2001 - .2002, .2004, .2101, .2103; and adopt rule(s) cited as 21 NCAC 54 .1706, .2006.

The proposed effective date of this action is October 1, 1991.

The public hearing will be conducted at 4:00 p.m. on June 20, 1991 at the Holiday Inn, North, Winston-Salem, N.C.

Comment Procedures: Requests to present written or oral comments at the public hearing or other comments not presented at the hearing should be submitted in writing by June 17, 1991, to the Board at the following address:

N.C. State Board of Examiners of Practicing
Psychologists
University Hall
Appalachian State University
Boone, NC 28608

CHAPTER 54 - BOARD OF PRACTICING PSYCHOLOGISTS

SECTION .1700 - APPLICATION FOR LICENSURE

.1701 INFORMATION REQUIRED

(a) The information required for each applicant consists of:

- (1) typed, or legibly printed, notarized application form and application fee;
- (2) official, graduate college transcripts sent directly to the Board by the training institutions(s);
- (3) completed and acceptable information forms from present and past supervisors;
- (4) three completed and acceptable reference letters forms from professionals who are familiar with the applicant's current work,

one of which is from a doctoral level psychologist;

- (5) evidence of being 18 years of age and of good moral character;
- (6) acceptable information forms sent directly from other states and provinces in which the applicant has applied for a license or has been licensed, if applicable;
- (7) official report of any previous score obtained on the Examination for Professional Practice in Psychology sent directly to the Board from the Professional Examination Service, if applicable; and
- (8) additional documentation regarding educational credentials described in 21 NCAC 54 .1801(b) and (c) Practicing Psychologist Requirements as of June 30, 1987, 21 NCAC 54 .1802(b) Psychological Associate, and 21 NCAC 54 .1803(b) Practicing Psychologist Requirements as of July 1, 1989, if applicable.

An application will not be reviewed by the Board if all requested materials are not received within one year from the date of application. When such is the case, an applicant must totally reapply, submitting all information again.

(b) An application must contain all requested materials to be complete. An incomplete application is active for six months from the date of application. At the end of such time, if still incomplete, the application is void, and the applicant must totally reapply.

Statutory Authority G.S. 90-270.9;
90-270.11(a),(b); 90-270.15; 150B-11(1).

.1703 TEMPORARY LICENSES

(d) A psychologist who meets all requirements of G.S. 90-270.11(a) for licensing, except the two years of acceptable and appropriate experience, may be issued a temporary license. To upgrade to permanent status, an application form must be filed with the Board. Final supervision reports will be required from all psychologists whose supervision time is not already documented in the applicant's file.

Statutory Authority G.S. 90-270.5; 90-270.9.

.1704 REVIEW PROCEDURE

(c) If the credentials are declared unacceptable, the applicant is ~~so informed~~ and is given an explanation of the areas which are considered deficient and informed of his/her right to an administrative hearing.

(d) If, during the review of information submitted with an application, questions arise from comments made in reference letters or supervisor

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reports which may pertain to the ethical behavior or the moral character of the applicant, such questions are dealt with in the following manner:

- (1) An effort is made to clarify the particulars of any allegations by correspondence or telephone calls with the person who has made the comments and/or with the applicant.
- (2) If the questions are not resolved, the applicant ~~shall~~ may be asked to appear before the Board for an interview.
- (3) Following ~~the~~ any interview, the Board conducts a full discussion of the allegations and determines by formal vote whether the evidence is sufficient to deny licensure.
- (4) If licensure is denied, ~~a general~~ an explanation of the grounds on which the decision was made is given and the applicant is informed of his/her right to an administrative hearing. ~~The applicant may present additional written evidence in support of the application, meet personally with the Board to support further the position taken, or request a contested case hearing.~~

Statutory Authority G.S. 90-270.9; 90-270.15; 150B-11(1).

.1706 REAPPLICATION

To reapply, an applicant must again submit all information listed in 21 NCAC 54 .1701 Information Required and, if applicable, .1702 Foreign Degree Application Policy. A reapplication will be reviewed under the statutes and rules in effect on the date of reapplication.

Statutory Authority G.S. 90-270.9; 150B-11(1).

SECTION .1800 - EDUCATION

.1802 PSYCHOLOGICAL ASSOCIATE

(c) An applicant whose credentials have been approved by the Board for examination at the practicing psychologist level may be issued a license as a psychological associate if the applicant fails an examination at the practicing psychologist level but passes such at the psychological associate level. To receive this license, the applicant must make a written request to the Board for licensure at the psychological associate level within 30 days from the date on which the applicant is notified of his/her examination score.

Statutory Authority G.S. 90-270.2(f); 90-270.4(a); 90-270.9; 90-270.11(b)(1)c; 90-270.11(b)(3).

.1803 PRACTICING PSYCHOLOGIST

REQUIREMENTS AS OF JULY 1, 1989

(c) Two years of acceptable and appropriate supervised experience is as defined in 21 NCAC 54 .2001 Supervisor, .2002 Nature of Supervision, and .2004 Time Requirements.

Statutory Authority G.S. 90-270.2(a); 90-270.9; 90-270.11(a)(1)c.

SECTION .1900 - EXAMINATION

.1902 REPORTING OF SCORES

Each applicant for licensure is informed in writing of his/her score on the national and state examinations. Those who have not passed are informed that licensure is denied and of the policies regarding re-examination.

Statutory Authority G.S. 90-270.9.

.1903 RETAKING

An applicant who has not passed an examination is allowed to retake such on the next scheduled examination date upon paying payment of the required examination fee. If an applicant fails an examination twice, he/she must totally reapply, submitting again all information listed in 21 NCAC 54 .1701 Information Required and, if applicable, .1702 Foreign Degree Application Policy. The examination may be taken only for licensure purposes.

Statutory Authority G.S. 90-270.9.

.1904 FAILURE TO APPEAR

If an applicant does not appear for an examination on the first scheduled examination date following approval of credentials, he/she may be admitted to the second scheduled examination. If the applicant fails to appear for the second examination, licensure is denied. If an applicant to which admitted by the Board, or does not appear for reexamination on the first scheduled examination date following failure of an examination, he/she may be admitted to the second scheduled examination. If the applicant fails to appear for the second examination, licensure is denied. When licensure is denied, the applicant must totally reapply, submitting again all information listed in 21 NCAC 54 .1701 Information Required and, if applicable, .1702 Foreign Degree Application Policy. The examination may be taken only for licensure purposes. must totally reapply.

Statutory Authority G.S. 90-270.9.

SECTION .2000 - SUPERVISION

.2001 SUPERVISOR

(a) A licensed practicing psychologist, permanent, will be recognized as an appropriate supervisor for any psychological associate or practicing psychologist, temporary. In addition, any person who was in a psychology position with the State of North Carolina on December 31, 1979, and who is still so employed, will be recognized an appropriate supervisor for any psychological associate or practicing psychologist, temporary, who is employed by a state agency or department; provided that such supervision is, and was on December 31, 1979, within the psychologist's regular job description and is only for activities which are part of the regular duties and responsibilities of the supervisee within his/her regular position. Being designated as an appropriate supervisor for other licensees in no way affects a psychological associate's or practicing psychologist's, temporary, obligation to comply themselves with supervision requirements.

(a) The following individuals may be recognized as an appropriate supervisor for any psychological associate or practicing psychologist, temporary:

- (1) a licensed practicing psychologist, permanent;
- (2) professionals other than psychologists, in keeping with Rule .2005 in this Section;
- (3) any person who was in a psychology position with the State of North Carolina on December 31, 1979, and who is still so employed, provided that such supervision is, and was on December 31, 1979, within the psychologist's regular job description and is only for activities which are part of the regular duties and responsibilities of the supervisee within his/her regular position at a state agency or department;
- (4) a doctoral level licensed psychologist who is licensed in the state or province where the supervisee is practicing psychology; or
- (5) an individual who, although not licensed as a psychologist, is, in the opinion of the Board, trained as a psychologist.

(b) The Board may disapprove an otherwise qualified supervisor for any psychological associate or practicing psychologist, temporary, if the potential supervisor, in the opinion of the Board, is not acceptable. Reasons for which a proposed supervisory relationship may be disapproved shall include, but not be limited to:

- (1) evidence that the potential supervisor is not competent or qualified to supervise the supervisee;

- (2) evidence that the supervisor has failed to adhere to ethical standards;

- (3) evidence that there is a lack of congruence between the potential supervisor's training, experience, and area of practice and the supervisee's proposed area(s) of practice; or

- (4) the supervisor has an encumbered license.

(c) (b) It is the supervisor's responsibility to provide the best possible professional guidance which is mutually beneficial to both the supervisee and to the public which he/she ultimately serves. It is the supervisor who serves as a primary professional guardian of the supervisee, the profession, and the public. Supervisors are to carefully assess their own ability to meet the particular needs of potential supervisees. It is expected that the professional expertise and experience of the supervisor will parallel the expected practice of the supervisee. Should there be some areas in which the supervisor does not feel so qualified, adjunct supervisors shall be sought, although this additional supervision is, in no way, to replace the overall responsibility of the primary supervisor. Clear professional goals shall be set by the supervisor and supervisee for, and during, the period of supervision and these goals must be evaluated on a regular basis.

(d) (c) In order to maintain the professional nature of the supervision, a familial or strongly personal relationship shall not exist between the supervisor and supervisee, except in extraordinary circumstances, such as the unavailability of any other qualified supervisor. In such cases, the Board may require documentation that no other supervision is available and reference letters from colleagues commenting on the appropriateness of the proposed supervisory relationship.

Statutory Authority G.S. 90-270.2(f); 90-270.5(d); 90-270.9.

.2002 NATURE OF SUPERVISION

(c) The supervisee and his/her supervisor are expected to determine jointly which cases, issues, and techniques are most appropriate and necessary for supervision, although both parties are fully accountable for all professional activities in terms of adequate standards of care and adherence to other relevant ethics principles. Specific supervision is not mandated for each person evaluated or treated, or for every treatment, evaluative technique, or professional activity undertaken. Supervisors are not required to sign or co-sign reports, treatment plans, letters, or other clinical documents for which the supervisee may be fully or in part responsible; neither is it necessary that such clinical documents reflect the

supervisory process. Agencies are not, of course, precluded from requiring supervisor signatures or co-signatures.

Statutory Authority G.S. 90-270.2(f); 90-270.5(d); 90-270.9.

.2004 TIME REQUIREMENTS

(a) Practicing Psychologist, Temporary. All activities involving the practice of psychology are subject to review by a supervisor.

- (2) Permanent status requires at least two full calendar years and 3100 hours of post-doctoral supervised practice. Temporary licensees are encouraged to meet this requirement through full-time practice. Full-time practice is credited based on the number of weeks of actual practice. Part-time practice is credited based on the number of hours per week of actual practice. A maximum of 31 hours may be credited for a week of actual practice. ~~If the required supervised experience is not accumulated within two full calendar years, a written request must be made for extension of the temporary license. An explanation must be provided to the Board regarding the necessity for extension, and a statement provided indicating the date that the supervision will be completed.~~

Statutory Authority G.S. 90-270.2(f); 90-270.4(a2); 90-270.5(d); 90-270.9.

.2006 PSYCHOLOGICAL ASSOCIATE ACTIVITIES

(a) Activities involving overall personality appraisal or classification are subject to review by a supervisor. Such appraisal and classification requiring supervision is defined as any assessment or evaluative technique (i.e., testing, observation, interviewing, or reports of others) which leads to conclusions, inferences, and hypotheses regarding personality functioning. Included are all statements relative to personality attributes, features, traits, structure, dynamics, and pathology or assets, whether or not these lead to a diagnosis or diagnostic impression. Techniques include but are not limited to the following: observation; open-ended and structured interviewing; word association tests; diagnostic play therapy; autobiographical techniques; mental status examinations; and, the use of "projective" and "objective" techniques. "Projective" techniques include such instruments as the Rorschach, Thematic Apperception Test, Tasks of Emotional Development, the Children's Apperception Test,

the House-Tree-Person Technique, the Draw-A-Person (when used to assess personality), Kinetic Family Drawings, sentence completion tests, and all similar tests. "Objective" personality tests include the Minnesota Multiphasic Personality Inventory, the Millon tests, the California Personality Inventory, the 16PF, the California Test of Personality, and all other self-report inventories and questionnaires, as well as scales and check lists completed by others. The tests identified in this Rule as requiring supervision do not constitute an exhaustive list, only the most commonly utilized measures.

(b) Neuropsychological evaluation requires supervision.

(c) Not requiring supervision are neuropsychological screening and interviewing and observation which lead to simple behavioral descriptions. Initial screening interviews which may lead to referral for more extensive evaluation or treatment do not require supervision. Also not requiring supervision are adjective check lists, behavior rating scales, and other rating devices which may be completed by a variety of professional and non-professional observers and are subsequently interpreted by other parties.

(d) Activities involving personality counseling or personality readjustment techniques are subject to review by a supervisor. In determining whether or not supervision is required, the following must be considered:

- (1) the nature of the techniques to be used;
- (2) the target behavior, attitude, affect, habit, or other personality attribute or feature to be acquired or modified; and
- (3) the population which is treated or addressed.

(e) Supervision is required for activities if any one of the following is met:

- (1) techniques: Those requiring supervision, whether utilized by the psychological Associate or those supervised by him/her, include but are not limited to psychotherapy, group therapies, therapeutic counseling or therapeutic interviewing, and hypnotherapeutic procedures. Also included are behavior management and behavior modification techniques which utilize punishment (negative reinforcers, aversive stimulation, and, in some instances, the withdrawal of positive reinforcers), extended "time out" (beyond several minutes), seclusion (in which a client is locked in a room or otherwise prevented from leaving), and all physical restraint. Also included are any other techniques which are physically intrusive, are restrictive of basic human

- rights, or are experimental in nature in which the efficacy and degree of risk are unknown. Biofeedback techniques, however, do not require supervision;
- (2) target behaviors or symptoms: These include behaviors, attitudes, affects, habits, or other personality attributes or features, which, when addressed either directly with the person or in consultation, include activity which is actually or is potentially maladaptive or harmful to the person, others, or the physical environment. These include but are not limited to: adjustment difficulties; attention deficit; hyperactivity; impulsivity; sexual difficulties; aggression; somatization; anxiety; self-injurious behavior; substance use; antisocial behavior; conduct disturbances; elimination and eating disturbances; depression or other deviant mood; psychotic activity; interpersonal difficulty; and, any other seriously self-defeating or self-compromising behavior. Supervision is required regardless of whether the behavior or symptoms meet the criteria for formal diagnosis; and
- (3) clinical populations: All interventions with clinical populations require supervision. These are comprised of persons with discernible mental, behavioral, emotional, psychological, and psychiatric disorders as evidenced by an established Axis I or Axis II diagnosis or V Code condition in the then current DSM, and all persons meeting the criteria for such diagnoses. Not included, however, would be persons with mental retardation diagnoses or specific developmental disorders (learning disabilities) when the psychological associate's interventions are in the domain of cognition rather than personality, and when there is no accompanying behavior or personality disorder. Not requiring supervision are techniques designed to stop or reduce cigarette smoking in otherwise non-clinical populations. Any person who carries a diagnosis from an alternative nosology (e.g., GAP or ICD), or is a Willie M. Class member, or qualifies for an educational placement based on an emotional or behavioral condition, or meets the diagnostic criteria from DSM or any of the above, whether established or not, is considered to be a member of a clinical population. Most persons in outpatient psychiatric or psychological treatment and many children with juvenile

court involvement would thus be included. Supervision is required for a psychological associate who provides clinical supervision to other service providers who are engaged in activities which would require supervision if directly provided by the psychological associate.

- (f) Psychological associates may use non-therapy, non-punitive, non-intrusive, non-experimental techniques without supervision to teach or facilitate new behaviors in the absence of maladaptive behavior or psychopathological conditions.

Statutory Authority G.S. 90-270.2(f); 90-270.9.

SECTION .2100 - RENEWAL

.2101 LICENSE RENEWAL FORM

(a) The license renewal application form is mailed to each licensee in the fall of each year. It is a licensee's responsibility to renew his/her license in a timely manner, and to notify the Board if a renewal application form is not received.

(b) ~~In addition to the request for current addresses, the form requires~~ The form may require the licensee to supply the following information including, but not limited to, the following: current addresses; area of specialty; principal setting of practice; whether or not the licensee received any formal continuing education during the past year; report on all supervision contract forms on file with the Board if licensed at the psychological associate or practicing psychologist, temporary, level.

(c) Failure of a postal service to deliver the renewal application properly, or failure of a licensee to submit all required information on the appropriate form by any established statutory deadline, does not excuse the late fee or prevent license suspension.

Statutory Authority G.S. 90-270.9; 90-270.14; 150B-11(1).

.2103 REINSTATEMENT

(a) The information required for each applicant requesting reinstatement after a license has been suspended due to non-renewal ~~or after a practicing psychologist, temporary, license has expired~~ consists of:

- (1) typed, or legibly printed, notarized application form;
- (2) completed and acceptable information forms from all present and past supervisors; since the license was suspended or expired;

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- (3) three completed and acceptable ~~current~~ professional reference letters, forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist;
- (4) acceptable information forms sent directly from other states and provinces in which

- the applicant has applied for a license or has been licensed, if applicable; and
- (5) official graduate college transcripts, not on file in the Board's office, sent directly to the Board by the training institution(s).

Statutory Authority G.S. 90-270.9; 90-270.15.

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Rules filed with changes are noted with ** Amended, ** Adopted. Please contact this office if you have any questions.*

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as * Correction. These changes do not change the effective date of the rule.*

TITLE 5 - DEPARTMENT OF CORRECTION

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2F - CUSTODY AND SECURITY

SECTION .2500 - SMOKING - NO SMOKING

.2502 PROCEDURE

(a) Responsibility:

- (1) The Correctional Center Superintendent and or Area Administrator or Institution Head, pursuant to this policy, should establish smoking no smoking areas within the facility.
- (2) The Superintendent or Institution Head should incorporate the smoking no smoking designations in the facility's Standard Operating Procedures.

(b) Designation of No Smoking Areas. Smoking is prohibited in the following locations:

- (1) Hazardous Areas: These areas include any location which has or may have flammable liquids, gases or vapors, as well as any area where there is a collection of readily combustible materials. Any questions about such designation should be referred to the Division's Safety Officer.
- (2) Elevators.
- (3) Health Care Facilities: These areas include clinical treatment areas, i.e. operating rooms, examining rooms, nursing stations, x-ray suites. Smoking in other areas of health care facilities is restricted to private offices and other non-clinical areas designated by the Health Treatment Administrator or Nursing Supervisor.
- (4) Food Preparation and Serving Areas: These areas include sections of the kitchen where and when food is being prepared and or served.
- (5) Vehicles: This prohibition applies when inmates are being transported and when the vehicle is being fueled and or serviced.

(c) Designation of Restricted Smoking Areas:

- (1) Restrictions may include designated smoking and no smoking areas in each specific location within the facility. Prior to designating smoking no smoking areas, the Superintendent or Institution Head should review the physical layout of the facility and the existence of ventilation in a particular location within the facility.

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- (2) The designation of restricted smoking areas will be established in the following locations, except as authorized by the Superintendent or Institution Head for a designated use and/or time:
- (A) Dining facilities;
 - (B) Classrooms;
 - (C) Libraries;
 - (D) Dormitories;
 - (E) Single Cell Buildings;
 - (F) Gyms;
 - (G) Recreation Buildings;
 - (H) Auditoriums;
 - (I) Chapels.
- (3) Smoking restrictions in prison enterprise operations should be determined by safety issues, the nature of the specific operation, and the physical environment of the operation.
- (4) The Superintendent or Institution Head should consider establishing smoking/no smoking areas in any other location within the facility not previously specified.

*History Note: Statutory Authority G.S. 148-11;
Eff. April 1, 1991;
Amended Eff. June 1, 1991.*

.2503 NOTICE

- (a) No Smoking Areas. "No Smoking" signs should be placed in areas where smoking is prohibited or restricted.
- (b) Smoking Areas. "Smoking" signs should be placed in areas where smoking is permitted. Areas where smoking is permitted should have an adequate number of non-combustible ashtrays.

*History Note: Statutory Authority G.S. 148-11;
Eff. April 1, 1991;
Amended Eff. June 1, 1991.*

TITLE 17 - DEPARTMENT OF REVENUE

CHAPTER 11 - PROPERTY TAX COMMISSION

SECTION .0100 - ORGANIZATION OF COMMISSION

.0101 LOCATION

The Property Tax Commission is located in the Williams-Cross Building at the intersection of Hillsborough Street and Boylan Avenue in Raleigh, North Carolina. The mailing address of the Commission is: 706 Hillsborough Street, Raleigh, N. C. 27603.

*History Note: Statutory Authority G.S. 105-288; 105-290; 143B-217 to 143B-225;
Eff. February 1, 1976;
Amended Eff. June 1, 1991.*

.0102 GENERAL PURPOSE

*History Note: Statutory Authority G.S. 105-288; 143B-217 to 143B-225;
143B-10;
Eff. February 1, 1976;
Repealed Eff. June 1, 1991.*

.0103 COMMISSION ORGANIZATION

The Property Tax Commission consists of five members including a chairman who is designated by the Governor and a vice-chairman elected by the members. The Governor appoints three of the

members and the General Assembly appoints two. Of the members appointed by the General Assembly, one is recommended by the Speaker of the House and one is recommended by the President of the Senate. The member appointed on the recommendation of the Speaker of the House is appointed for a two year term; all other members are appointed for a four year term. The Director of the Property Tax Division serves as Secretary for the Commission and the employees of the Ad Valorem Tax Section serve as its staff to investigate appeals and perform other duties as requested by the Commission.

*History Note: Statutory Authority G.S. 143B-217 to 143B-225;
Eff. February 1, 1976;
Amended Eff. June 1, 1991.*

SECTION .0200 - APPEALS TO PROPERTY TAX COMMISSION

.0201 WHO MAY APPEAL

Any person having an ownership interest in property subject to taxation within a taxing jurisdiction may appeal; however, this provision shall not be construed as giving any person a right to represent the interest of another person. Representation of a party in a proceeding before the Property Tax Commission constitutes the practice of law.

*History Note: Statutory Authority G.S. 84-4; 105-290; 143B-222;
Eff. February 1, 1976;
Amended Eff. June 1, 1991.*

.0202 WHEN APPEALS MAY BE TAKEN

A taxpayer who is dissatisfied with a decision concerning the listing, appraisal, or assessment of property made by a board of county Commissioners, a board of equalization and review, or (in the case of public service companies) the Department of Revenue may appeal to the Property Tax Commission.

*History Note: Statutory Authority G.S. 105-288; 105-290;
Eff. February 1, 1976;
Amended Eff. June 1, 1991.*

.0203 APPEALS FROM LISTING, APPRAISAL, OR ASSESSMENT DECISIONS

.0204 APPEALS FROM ADOPTION OF SCHEDULES, STANDARDS AND RULES

*History Note: Statutory Authority G.S. 105-290(b),(c);
Eff. February 1, 1976;
Repealed Eff. June 1, 1991.*

.0205 NOTICE OF APPEAL

A notice of appeal to the Commission shall be in writing, and shall state the grounds for the appeal. The notice of appeal should be signed by the property owner or his attorney. Non-attorney "tax representatives" may sign a notice of appeal on behalf of the property owner provided a signed and notarized power of attorney or other properly executed authorization to represent the property owner is filed with the notice. A power of attorney form is available from the Commission. A copy of the notice of appeal should be sent to the county assessor.

*History Note: Statutory Authority G.S. 105-290; 143B-222;
Eff. February 1, 1976;
Amended Eff. June 1, 1991.*

.0206 WHO SHALL HEAR THE APPEAL

*History Note: Statutory Authority G.S. 105-290(b);
Eff. February 1, 1976;
Repealed Eff. June 1, 1991.*

.0207 PLACE OF HEARING

All hearings before the Commission will be held in Raleigh, North Carolina unless the Commission designates another location.

*History Note: Statutory Authority G.S. 105-290; 143B-222;
Eff. February 1, 1976;
Amended Eff. June 1, 1991.*

.0208 PRE-HEARING CONFERENCE

In any appeal, the Commission or the staff of the Commission may hold a conference in advance of the hearing for the purpose of simplifying the issues, stipulating certain facts or findings, and discussing any other matters which will help to expedite the appeal.

*History Note: Statutory Authority G.S. 105-291; 143B-222;
Eff. February 1, 1976;
Amended Eff. June 1, 1991.*

.0209 CONDUCT OF HEARING

The hearing before the Commission is a formal adversarial proceeding conducted under the rules of evidence as applied in the Trial Division of the General Courts of Justice. The North Carolina Rules of Civil Procedure do not apply to proceedings before the Commission.

*History Note: Statutory Authority G.S. 1A-1; 105-290; 143B-222;
Eff. February 1, 1976;
Amended Eff. June 1, 1991.*

.0210 VALUATION IS FINAL AND CONCLUSIVE

*History Note: Statutory Authority G.S. 105-290;
Eff. February 1, 1976;
Repealed Eff. June 1, 1991.*

.0211 JUDICIAL REVIEW

No party aggrieved by a final decision or order of the Commission may appeal unless within 30 days after the entry of such decision or order the party shall file with the Commission a notice of appeal and exceptions which sets forth specifically the ground or grounds upon which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable, or unwarranted. The notice of appeal shall clearly state the errors alleged to have been committed by the Commission.

*History Note: Statutory Authority G.S. 105-345;
Eff. February 1, 1976;
Amended Eff. June 1, 1991.*

.0212 APPEALS ACKNOWLEDGED AND REPLIES THERETO PERMITTED

(a) Notices of appeal to the Commission will be acknowledged in writing and an application for hearing will be mailed to the appellant. A copy of the letter of acknowledgement will also be mailed to the county assessor and to the county attorney.

(b) Unless an extension has been requested and granted, the application for hearing must be filed within 30 days of the date of the letter of acknowledgment or the appeal may be dismissed. A copy of the completed application for hearing must also be sent to the county attorney at the same time.

(c) The county attorney will be allowed 20 days from the receipt of the completed application for hearing to file a written Answer to the appeal. A copy of the Answer shall be sent to the appellant at the same time. The county's failure to file an Answer, however, shall not constitute a waiver of the county's rights nor an admission of the appellant's allegations.

*History Note: Statutory Authority G.S. 143B-222;
Eff. June 1, 1982;
Amended Eff. June 1, 1991.*

.0215 PARTIES FURNISHED NOTICE OF PROPOSED HEARING DATE

Approximately 50 days before the scheduled dates of a hearing, the Secretary of the Commission will establish a proposed hearing calendar of appeals to be heard and will mail to each of the affected parties a notice setting out the proposed dates of the hearing. Any party objecting to the proposed dates must notify the Secretary in writing within 10 days of the mailing of the notice, and shall set forth the specific objections in the form of a motion to continue. The Secretary shall rule on motions to continue timely made.

*History Note: Statutory Authority G.S. 105-290; 143B-222;
Eff. June 1, 1982;
Amended Eff. June 1, 1991.*

.0217 APPEARANCE AT HEARING REQUIRED

(a) In order to pursue an appeal, the appellant must either appear at the scheduled hearing or be represented at the hearing by an attorney at law. Attorneys at law not authorized to practice in North Carolina must comply with the provisions of G.S. 84-4.1, which requires that a North Carolina attorney appear with the out-of-state attorney at the hearing.

(b) If no continuance has been granted, the failure of the appellant or his attorney to appear at the scheduled time and date for hearing is grounds for dismissal of the appellant's appeal. The Commission may dismiss the appeal on motion of the opposing party or on its own motion.

(c) If the appellant is a trust, a trustee may appear for the trust; if the appellant is a partnership, a general partner may appear for the partnership. A family member may not represent another family member; an attorney-in-fact may not represent grantor of the power of attorney.

*History Note: Statutory Authority G.S. 84-4; 84-4.1; 143B-222;
Eff. June 1, 1991.*

.0218 DISCOVERY

(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearing without unduly delaying, burdening, or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties are obliged to exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.

(b) Any means of discovery available pursuant to the North Carolina Rules of Civil Procedure, G.S. 1A-1, is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the Commission to obtain an order compelling discovery. In the disposition of the motion, the party seeking the discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy are significant enough to warrant the discovery. In ruling on a motion for discovery, the Commission shall recognize all privileges recognized at law.

*History Note: Statutory Authority G.S. 143B-222;
Eff. June 1, 1991.*

.0219 COMMISSION STAFF NOT TO BE CALLED AS WITNESSES

No member of the staff of the Commission may be called as a witness in a proceeding before the Commission unless the Commission shall first find that the testimony of a staff member is necessary to prevent manifest injustice to a party.

*History Note: Statutory Authority G.S. 143B-222;
Eff. June 1, 1991.*

TITLE 19A - DEPARTMENT OF TRANSPORTATION

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3D - LICENSE AND THEFT SECTION

SECTION .0800 - SAFETY RULES AND REGULATIONS

.0801 SAFETY OF OPERATION AND EQUIPMENT

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carriers, while engaged in interstate commerce over the highways of the State of North Carolina.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 26,000 pounds; are designed to transport 16 or more passengers, including the driver; or transport hazardous materials required to be placarded pursuant to 49 CFR 170-190. Provided, the following exceptions shall also apply to all intrastate motor carriers:

- (1) 49 CFR 396.17 shall not apply to vehicles operated by farmers or their employees solely within North Carolina.
- (2) An intrastate motor carrier driver may not drive more than 12 hours following eight consecutive hours off duty; or for any period after having been on duty 16 hours following eight consecutive hours off duty; or after having been on duty 70 hours in seven consecutive days; or more than 80 hours in eight consecutive days. An intrastate driver will be determined by his previous seven days of operation.
- (3) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina will be exempt from provisions of Part 391.11(b)(1) and Part 391.41(b)(1) through (11) and therefore will be authorized for intrastate operation if licensed prior to March 30, 1992, are approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles and meet all other requirements of this Section. These drivers shall continue to be exempt upon completion of a biennial medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer.

*History Note: Statutory Authority G.S. 20-384;
Eff. December 1, 1983;
Amended Eff. June 1, 1991; November 1, 1990;
September 1, 1990; November 1, 1988.*

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

MAY 1991

AGENCY			ACTION TAKEN
<u>DEPARTMENT OF AGRICULTURE</u>			
2	NCAC	9L .0506	Amended
<u>DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT</u>			
4	NCAC	3G .0001 - .0003	Repealed
		.0104	Adopted
		.0201	Adopted
		.0202	** Adopted
		.0301	** Adopted
		.0302 - .0303	Adopted
		.0401 - .0403	Adopted
		.0501	** Adopted
		.0503 - .0504	Adopted
	7	.0101 - .0105	Repealed
		.0201 - .0206	Repealed
		.0301 - .0305	Repealed
		.0501 - .0503	Repealed
		.0510	Repealed
		.0517 - .0520	Repealed
	12C	.0005 - .0006	** Amended
	19R	.0101	Adopted
		.0102 - .0103	** Adopted
		.0201 - .0202	Adopted
		.0301 - .0302	Adopted
		.0303 - .0304	** Adopted
		.0305	Adopted
		.0401	Adopted
		.0402	** Adopted
		.0501	Adopted
		.0502	** Adopted
		.0503 - .0505	Adopted
		.0601	Adopted
		.0602	** Adopted
		.0603 - .0604	Adopted
<u>DEPARTMENT OF CORRECTION</u>			
5	NCAC	2B .0301	Amended
<u>OFFICES OF THE GOVERNOR/LIEUTENANT GOVERNOR</u>			
9	NCAC	2B Executive Order Number 135	
		Eff. March 19, 1991	
		Executive Order Number 136	
		Eff. March 20, 1991	
		Executive Order Number 137	
		Eff. March 22, 1991	

FINAL RULES

Executive Order Number 138
Eff. March 28, 1991

DEPARTMENT OF HUMAN RESOURCES

10	NCAC	3R	.2801 - .2809	** Adopted
		3U	.0511	* Correction
		14K	.0325	Repealed
			.0408	Amended
		20F	.0501	Adopted
			.0502 - .0503	** Adopted
			.0504	Adopted
			.0505 - .0510	** Adopted
		26H	.0202	Temp. Amended
				Expires 09-30-91
			.0204	Temp. Amended
				Expires 09-30-91
			.0206	Temp. Amended
				Expires 09-30-91
		42C	.3301	Amended
		42D	.1401	Amended

DEPARTMENT OF INSURANCE

11	NCAC	14	.0308	** Adopted
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DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A	NCAC	7H	.0208	** Amended
		8A	.0101 - .0102	** Amended
			.0202	** Amended
		8B	.0108 - .0109	Amended
			.0201	Amended
			.0202 - .0205	** Amended
			.0302	Amended
			.0303	Amended
			.0404 - .0405	** Amended
		8C	.0002	** Amended
			.0004	** Amended
		8D	.0004	** Amended
			.0005 - .0006	Amended
		10H	.0807	** Amended
		13A	.0009 - .0010	Amended
			.0015	Repealed
			.0016 - .0017	* Correction
		16A	.0801	Adopted
			.0802	** Adopted
			.0803	Adopted
			.0804	** Adopted
			.0805	Adopted
			.0806	** Adopted
			.0807 - .0810	Adopted
		18A	.1957	** Amended
			.2501 - .2507	Repealed
			.2508	Adopted
			.2509	** Adopted
			.2510 - .2511	Adopted
			.2512	** Adopted
			.2513	Adopted

FINAL RULES

.2514 - .2515	** Adopted
.2516 - .2519	** Adopted
.2520	Adopted
.2521 - .2535	** Adopted
.2536	Adopted
.2601	** Amended
.2604 - .2605	** Amended
.2607	** Amended
.2608	** Amended
.2609	Amended
.2610	** Amended
.2612	** Amended
.2613	Amended
.2614 - .2615	** Amended
.2617	** Amended
.2619	** Amended
.2623 - .2628	** Amended
.2629	Amended
.2630	** Amended
.2631	Amended
.2632 - .2634	** Amended
.2635	Amended
.2637	** Amended
.2638	Amended
.2640	** Amended
.2641	Amended
.2701	** Amended
.2702	Amended
.2704 - .2705	** Amended
.2706	Amended
.2708	Amended
.2710	** Amended
.2712	Amended
.2714	** Amended
.2716	Amended
.2718	** Amended
.2720	** Amended
.2722	** Amended
.2723	Amended
.2724	** Amended
.2725	Amended
.2901	** Adopted
19A .0102	** Amended
.0201	** Amended
19H .0601	Amended
.1001	** Amended
.1301	Amended
21D .0706	Amended
24A .0303	Amended

DEPARTMENT OF EDUCATION

16	NCAC	6C .0205	** Amended
		.0310	** Amended
		6H .0010	** Amended

N.C. AUCTIONEERS COMMISSION

21	NCAC	4B .0201	** Amended
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FINAL RULES

.0302 - .0303	Eff. June 1, 1991 Amended
.0403	Eff. June 1, 1991 ** Amended
.0603	Eff. June 1, 1991 ** Adopted Eff. June 1, 1991

BOARD OF CPA EXAMINERS

21	NCAC	8F	.0105	* Correction
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BOARD OF COSMETIC ART EXAMINERS

21	NCAC	14A	.0101	** Amended
		14G	.0003	** Amended
			.0007	** Amended
		14I	.0103	** Amended
			.0109	** Amended
		14L	.0101	** Amended

BOARD OF DENTAL EXAMINERS

21	NCAC	16A	.0001	Amended
			.0004	Amended
		16B	.0101	Amended
			.0307	Amended
			.0315	** Amended
		16C	.0306	Amended
		16I	.0004	Amended
		16J	.0003	** Amended

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

21	NCAC	37	.0603	Amended
			.0606	Amended

N.C. REAL ESTATE COMMISSION

21	NCAC	58C	.0302	Temp. Amended Expires 10-02-91
		58D	.0201	Temp. Amended Expires 10-02-91

OFFICE OF STATE PERSONNEL

25	NCAC	1L	.0202	** Amended
			.0203	** Amended

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

<i>4 NCAC 3G .0203 - Expiration and Renewal</i>	<i>ARRC Objection 3/21/91</i>
<i>4 NCAC 3G .0502 - Annual Report</i>	<i>ARRC Objection 3/21/91</i>
<i>4 NCAC 3G .0601 - Revocation or Suspension; Hearings</i>	<i>ARRC Objection 3/21/91</i>

Community Assistance

<i>4 NCAC 19R .0103 - Waivers</i>	<i>ARRC Objection 2/25/91</i>
<i>Agency Withdrew Rule</i>	<i>3/21/91</i>
<i>4 NCAC 19R .0303 - Distribution of Funds</i>	<i>ARRC Objection 2/25/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 3/21/91</i>
<i>4 NCAC 19R .0304 - Reallocation</i>	<i>ARRC Objection 2/25/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 3/21/91</i>
<i>4 NCAC 19R .0602 - Reporting</i>	<i>ARRC Objection 2/25/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 3/21/91</i>

Energy

<i>4 NCAC 12C .0005 - Forms</i>	<i>ARRC Objection 2/25/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 3/21/91</i>
<i>4 NCAC 12C .0006 - Scope and Purpose of State Set-Aside</i>	<i>ARRC Objection 2/25/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 3/21/91</i>

Hazardous Waste Management Commission

<i>4 NCAC 18 .0309 - Final Site</i>	<i>ARRC Objection 1/18/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action 2/25/91</i>

EDUCATION

Elementary and Secondary Education

<i>16 NCAC 6C .0205 - Teacher Education Program State Review Standards</i>	<i>ARRC Objection 3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 3/21/91</i>
<i>16 NCAC 6C .0310 - Standard Examinations</i>	<i>ARRC Objection 3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 3/21/91</i>
<i>16 NCAC 6H .0010 - Special Education Due Process Procedures</i>	<i>ARRC Objection 3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 3/21/91</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

<i>15A NCAC 16A .0804 - Financial Eligibility</i>	<i>ARRC Objection 1/18/91</i>
<i>No Response from Agency</i>	<i>2/25/91</i>
<i>Agency Responded</i>	<i>No Action 3/21/91</i>

ARRC OBJECTIONS

<i>15A NCAC 16A .0806 - Billing the HIV Health Services Program</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>No Response from Agency</i>		<i>2/25/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>3/21/91</i>

Coastal Management

<i>15A NCAC 7J .0409 - Civil Penalties</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>2/25/91</i>
<i>15A NCAC 7J .1109 - Permit Fee</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>Agency Withdrew Rule</i>		<i>2/25/91</i>

Environmental Health

<i>15A NCAC 18A .2515 - Design Details</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2516 - Pool Profile</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2517 - Diving Equipment</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2519 - Filters</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2523 - Depth Markings and Safety Ropes</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2529 - User Loading</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2534 - Chemical Storage</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2535 - Water Quality Standards</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2537 - Appeals</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2614 - Outdoor Dining</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2618 - Cleaning of Equipment and Utensils</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2711 - Toilet Facilities</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>15A NCAC 18A .2901 - Disbursement of Funds</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>

Solid Waste Management

<i>15A NCAC 13A .0016 - Special Purpose Com Hazardous Waste Facility</i>	<i>ARRC Objection</i>	<i>2/25/91</i>
<i>Agency Responded</i>	<i>Obj. Removed</i>	<i>3/21/91</i>
<i>15A NCAC 13A .0017 - Fee Schedules</i>	<i>ARRC Objection</i>	<i>2/25/91</i>
<i>Agency Responded</i>	<i>Obj. Removed</i>	<i>3/21/91</i>

Wildlife Resources Commission

<i>15A NCAC 10H .0807 - Classes of Permits</i>	<i>ARRC Objection</i>	<i>2/25/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>

WTP Operators Certification Commission

<i>15A NCAC 8B .0404 - Temporary Certification</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>3/21/91</i>

HUMAN RESOURCES

Individual and Family Support

ARRC OBJECTIONS

10 NCAC 42B .1201 - Personnel Requirements	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
10 NCAC 42C .2001 - Qualifications of Administrator	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
10 NCAC 42C .2006 - Qualifications of Activities Coordinator	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
10 NCAC 42C .3301 - Existing Building	ARRC Objection	11/14/90
Agency Returned Rule Unchanged	No Action	12/20/90
10 NCAC 42D .1401 - Qualifications of Administrator/Co-Administrator	ARRC Objection	11/14/90
Agency Returned Rule Unchanged	No Action	12/20/90

Services for the Deaf

10 NCAC 20F .0502 - Definitions	ARRC Objection	3/21/91
Agency Revised Rule	Obj. Removed	3/21/91
10 NCAC 20F .0506 - Classification	ARRC Objection	3/21/91
Agency Revised Rule	Obj. Removed	3/21/91

LICENSING BOARDS AND COMMISSIONS

Auctioneer's Commission

21 NCAC 4B .0602 - Advertising	ARRC Objection	3/21/91
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CPA Examiners

21 NCAC 8M .0306 - Due Professional Care	ARRC Objection	2/25/91
Agency Withdrew Rule		3/21/91

Cosmetic Art Examiners

21 NCAC 14A .0101 - Definitions	ARRC Objection	2/25/91
Agency Revised Rule	Obj. Removed	3/21/91
21 NCAC 14G .0003 - Space Requirements	ARRC Objection	2/25/91
Agency Revised Rule	Obj. Removed	3/21/91
21 NCAC 14G .0007 - Equipment and Teachers	ARRC Objection	2/25/91
Agency Revised Rule	Obj. Removed	3/21/91
21 NCAC 14I .0103 - Inspections and Reports of Student Hours	ARRC Objection	2/25/91
Agency Revised Rule	Obj. Removed	3/21/91
21 NCAC 14I .0109 - Summary of Cosmetic Art Education	ARRC Objection	2/25/91
Agency Revised Rule	Obj. Removed	3/21/91
21 NCAC 14I .0302 - Library	ARRC Objection	2/25/91
Agency Responded	No Action	3/21/91
21 NCAC 14L .0101 - Qualifications - Cosmetologist Teachers	ARRC Objection	2/25/91
Agency Revised Rule	Obj. Removed	3/21/91
21 NCAC 14L .0210 - Effect on Student-Teacher Ratio	ARRC Objection	2/25/91
Agency Responded	No Action	3/21/91

Dental Examiners

ARRC OBJECTIONS

21 NCAC 16C .0310 - Reexamination
21 NCAC 16D .0101 - Eligibility Requirements

ARRC Objection 3/21/91
ARRC Objection 3/21/91

Medical Examiners

21 NCAC 32B .0309 - Personal Interview
Agency Responded
21 NCAC 32M .0007 - Termination of NP Approval
Agency Revised Rule

ARRC Objection 2/25/91
No Action 3/21/91
ARRC Objection 11/14/90
Obj. Removed 12/20/90

Nursing, Board of

21 NCAC 36 .0217 - Revocation, Suspension, or Denial of License
No Response from Agency
Agency Revised Rule
21 NCAC 36 .0504 - Certificate of Registration
Agency Revised Rule
21 NCAC 36 .0505 - General and Administrative Provisions
Agency Revised Rule
21 NCAC 36 .0507 - Fees
Agency Revised Rule

ARRC Objection 12/20/90
1/18/91
Obj. Removed 2/25/91
ARRC Objection 1/18/91
Obj. Removed 2/25/91
ARRC Objection 1/18/91
Obj. Removed 2/25/91
ARRC Objection 1/18/91
Obj. Removed 2/25/91

Physical Therapy

21 NCAC 48C .0102 - Responsibilities
Agency Returned Rule Unchanged
Agency Revised Rule
21 NCAC 48C .0501 - Exemption for Students
Agency Returned Rule Unchanged
Agency Revised Rule

ARRC Objection 9/20/90
No Action 10/18/90
Obj. Removed 2/25/91
ARRC Objection 9/20/90
No Action 10/18/90
Obj. Removed 2/25/91

SECRETARY OF STATE

Securities Division

18 NCAC 6 .1210 - Securities Exchgs/Autod Quot. Sys. Approved/Admin
Agency Responded to Objection

ARRC Objection 12/20/90
No Action 1/18/91

STATE PERSONNEL

25 NCAC 1D .0509 - Severance Salary Continuation
Agency's Response Unacceptable

ARRC Objection 1/18/91
2/25/91

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 26I .0101 - PURPOSE: SCOPE/NOTICE OF CHANGE IN LEVEL OF CARE

10 NCAC 26I .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 26I .0101, 10 NCAC 26I .0102 and 10 NCAC 26I .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DIIR 0940).

10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES

10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST

The North Carolina Court of Appeals, per Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. 603, 398 S.E.2d 40 (1990)].

16 NCAC 6D .0105 - USE OF SCHOOL DAY

The North Carolina Supreme Court, per Associate Justice Henry E. Frye, held invalid Rule 16 NCAC 6D .0105 as decided in *The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction, Plaintiffs v. Whittle Communications and The Thomasville City Board of Education, Defendant-Counterclaimants and The Davidson County Board of Education, Defendant-Intervenor and Counterclaimant v. The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction; and Howard S. Haworth; Barbara M. Tapscott; Kenneth R. Harris; Teena Smith Little; W.C. Meekins Jr.; Mary B. Morgan; Patricia H. Neal; Cary C. Owen; Donald D. Pollock; Prezell R. Robinson; Norma B. Turnage; State Treasurer Harlan E. Boyles; and Lt. Governor James C. Gardner; in their official capacities as members of The North Carolina State Board of Education, Counterclaim Defendants* [328 N.C. _____, _____ S.E.2d _____ (1991)].

15A NCAC 7H .0308 - SPECIFIC USE STANDARDS

The North Carolina Court of Appeals, per Judge Sidney S. Eagles Jr., held that it was error for the Coastal Resources Commission to fail to follow the required notice and comment procedure prior to the adoption of temporary rule 15A NCAC 7H .0308(a)(1)(M), but that the CRC followed proper procedures when it adopted the text of the temporary rule as a permanent rule [15A NCAC 7H .0308(a)(1)(M)]. *Conservation Council of North Carolina v. Haste* [102 N.C. App. _____, 402 S.E.2d 447 (1991)].

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
12	Justice	Hearing Aid Dealers and Fitters	22
13	Labor	Landscape Architects	26
14A	Crime Control and Public Safety	Landscape-Contractors	28
15A	Environment, Health, and Natural Resources	Marital & Family Therapy	31
16	Public Education	Medical Examiners	32
17	Revenue	Midwifery Joint Committee	33
18	Secretary of State	Mortuary Science	34
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		Practicing Psychologists	54
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C - Correction
FR - Final Rule
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